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Nos. 280, 314 and 966

October Term, 1941

IN THE
SUPREME COURT OF THE UNITED STATES.

ROSCO JONES, *Petitioner,*

v.

CITY OF OPELIKA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF ALABAMA.

LOIS BOWDEN AND ZADA SANDERS, *Petitioners,*

v.

CITY OF FORT SMITH.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF ARKANSAS.

CHARLES JOBIN, *Appellant,*

v.

THE STATE OF ARIZONA.

APPEAL FROM THE SUPREME COURT OF ARIZONA.

ON MOTIONS FOR REHEARING

BRIEF ON BEHALF OF THE GENERAL CONFERENCE
OF SEVENTH-DAY ADVENTISTS AS AMICUS
CURIAE.

HOMER CUMMINGS,
MILLWARD C. TAFT,

*Counsel for the General Conference of
Seventh-Day Adventists.*

INDEX

	Page
I. History and Beliefs of the Seventh-Day Adventist Denomination	2
A. Origin	2
1. Seventh-Day Baptists	3
2. The Adventists	3
3. The Seventh-Day Adventists	4
B. Growth and Organization	4
C. Activities	5
1. Health and Medical Evangelism ..	5
2. Educational Institutions	6
3. Publishing Houses	6
II. The Colporteur Evangelist System	8
A. In General	8
B. The Seventh-Day Adventist Colporteurs ..	8
III. The Adverse Effect of the Present Opinion ...	10

CITATIONS

Andross, Story of the Advent Message (Peekskill, N. Y., 1926)	2
Colporteurs' Summary—North America, 1940-1941 ..	11-12
Holy Bible:	
I Corinthians 3:16	6
I Corinthians 17	6
I Corinthians 9:25	6
I Corinthians 10:31	6
Daniel 8:14	3
Genesis 1:29	6
I John 2:26	6
III John 2	5
Mark 1:17	5
I Timothy 2:9, 10	6

Howell, The Great Advent Movement (Washington, D. C., 1935)	2, 7
Lóngacre, Roger Williams—His Life, Work, and Ideals (Washington, D. C., 1939)	3
Loughborough, Rise and Progress of Seventh-Day Adventists (Battle Creek, Michigan, 1892)	2
Loughborough, The Great Second Movement (South Bend, Ind., 1905)	2
Olsen, A History of the Origin and Progress of Seventh-Day Adventists (Washington, D. C., 3d ed. 1932)	2
Palmer, The Printing Press and the Gospel (Washington, D. C., 1912)	8
Statistical Report of Seventh-Day Adventist Conferences, 1940	6
Statistical Report of the Seventh-Day Adventist Conferences in the United States and Canada, First Quarter, 1942	5, 7
White, The Colporteur Evangelist (Mountain View, Calif., 1930)	8
Year Book of the Seventh-Day Adventist Denomination, 1942	4, 5, 6, 7, 8

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Since the legal issues in these cases have been completely argued, this brief will be confined to the facts as to the beliefs and evangelical methods of the Seventh-Day Adventist Denomination, and the deleterious effects of the present

decision. It will sketch, in short compass and with references to documentary material, the origin of the Denomination in early America, its tenets based upon a literal reading of the Bible, its primary mission work through the printed word, the religious nature and duty of the vending of Denominational literature, and the adverse operation of the present decision of this Court upon the essential methods of teaching and spreading the Gospel and hence upon the freedom of religion.

There have been filed herewith, as numbered exhibits, the Denomination's Annual Year Book for 1942 (Exhibit I), the most recent Statistical Reports of the Denomination and its General Conference (Exhibits II, III, and IV), the Financial Statement of the Seventh-Day Adventist Conferences (Exhibit V), the Colporteurs' Summary for North America for 1940-1941 (Exhibit VI), and a recent historical and anniversary number of one of the magazines of the Denomination (Exhibit VII).

I.

.History and Beliefs of the Seventh-Day Adventist Denomination.

The origins, beliefs, growth, organization, and activities of the Seventh-Day Adventist Denomination demonstrate its status as an entirely legitimate and orthodox religious movement.

A. Origins.—The roots of the Denomination are to be found in the time and place of the first settlements of New England, with its immediate organization in the religious revival at the beginning of the nineteenth century.¹

¹ Loughborough, *Rise and Progress of Seventh-Day Adventists* (Battle Creek, Michigan, 1892); Loughborough, *The Great Second Movement* (South Bend, Ind., 1905); Andross, *Story of the Advent Message* (Peekskill, N. Y., 1927); Olsen, *A History of the Origin and Progress of Seventh-Day Adventists* (Washington, D. C., 3d ed. 1932); Howell, *The Great Advent Movement* (Washington, D. C., 1935).

1. *Seventh-Day Baptists*.—Among the dissentient groups who first came to America were the Baptists, including those who observed the "Bible Sabbath" which fell on the Saturday of the Puritans. The first Sabbathkeeper came to America in 1664, forty-four years after the landing of the Pilgrims. They suffered the religious persecution of the time in New England. Three hundred years ago, Roger Williams, the founder of religious liberty in the New World, offered them haven in Rhode Island and championed their "most Scriptural" cause.² The Seventh-Day Movement thus became a part of the very birth of religious tolerance in America.³

2. *The Adventists*.—Early in the Nineteenth Century, the minds of religious men became particularly concerned with the prophecies of Divine revelation. Many of them, including men of prominence in both the Old World and the New, became enthusiastic converts to the view that the prophetic second coming of the Lord was at hand.⁴

² Longacre, Roger Williams—His Life, Work, and Ideals (Washington, D. C., 1939), 74-75, 87-88.

³ The Seventh-Day Baptists accepted Williams' invitation to Rhode Island, and one of them became governor. *Idem*, Williams was the first pastor of the first Baptist church of Providence, the Baptists carried their message of religious freedom to Anglican Virginia, and there Jefferson and Madison became their attorneys in their struggle for religious freedom. *Id.*, 100-101. Rhode Island refused to ratify the Constitution until assured, with the aid of Madison and Jefferson, that the declaration of tolerance in the Bill of Rights would be adopted. *Id.*, 183 *et seq.* As a minority group, the Seventh-Day Adventists, who succeeded the Seventh-Day Baptists, have always stressed the concept of separation of church and state, with complete liberty of conscience in spiritual matters.

⁴ The original leaders of the Adventist movement pointed to the prophecy in the book of Daniel, "And he said unto me, Unto two thousand and three hundred days; then shall the sanctuary be cleansed." Daniel 8: 14. These prophetic days they took to be literal years, beginning as they thought from the ninth chapter of Daniel at the going forth to restore and build Jerusalem in 457 B. C. The period would, therefore, end in the autumn of 1844 A. D. The uneventful passing of the year, of course, caused a decline in the numbers of Adventists and a revision of their beliefs. Accordingly, many Adventists adopted the view that the sanctuary

3. *The Seventh-Day Adventists.*—The faith of the Seventh-Day Adventists Denomination is, in essence, a uniting of the major beliefs of both the Adventists and the Seventh-Day Baptists. Adventists became convinced that the seventh day was the true Bible Sabbath and must be observed according to the Commandments, and the first Sabbath-keeping Adventist Church was formed at Washington, New Hampshire, in 1844.

B. Growth and Organization.—In 1861 the name “Seventh-Day Adventists” was formally adopted by the Denomination at Battle Creek, Michigan. In that year the first organizational plans were drawn for the State of Michigan. Two years later the first General Conference session was held and a world wide organization was planned.

The Organization as it exists today is as follows:

1. *The Church.*—A united body of individual believers holding the same faith and doctrines in common.

2. *The Local Conference.*—Or local mission field, which is a united body of churches in a state, province, or local territory.

3. *The Union Conference.*—Or union mission field, which is a united body of conferences or mission fields within a larger territory.

4. *The Division.*—A division or section of the General Conference, embracing local or union conferences or mission fields in large sections of the world field.

5. *The General Conference.*—The general body embracing the church in all parts of the world.

The organization of the Seventh-Day Adventist Church is representative in form. Every church member votes for

mentioned by Daniel was not this earth, but the temple of God in Heaven. The cleansing, therefore, of the Sanctuary began with the entrance of Christ as the high priest upon the judgment phase of his ministry which began in 1844. This is today the belief of the Seventh-Day Adventist Denomination. 1942 Year Book of the Seventh-Day Adventist Denomination, p. 5.

church officers and for delegates to the sessions of the local conferences, with authority to elect conference officers and transact other conference business. This same plan is in turn followed by the local conferences in sending delegates to the union conference sessions, and by the union conferences and divisions in sending delegates to the General Conference session.

The headquarters of the General Conference of Seventh-Day Adventists was originally located at Battle Creek, Michigan, but in the year 1903 it was moved to Takoma Park, Washington, D. C. In that same year the General Conference Corporation of Seventh-Day Adventists was incorporated under the laws of the District of Columbia, and it is this body that holds title to most of the Denomination's real property.

From its humble beginnings the Denomination now has over a half million followers throughout the world.⁵ Of this number, over one hundred and eighty thousand are members within the United States.⁶

C. Activities.—The word of Jesus in Mark 1:17; "Come ye after me, and I will make you fishers of men," motivates the entire field of activity in which the Denomination engages. Though the activities assume various forms, the teaching of the Gospel is the mission.

1. Health and Medical Evangelism.—The teaching of the Bible found in 3 John 2, "Beloved, I wish above all things that thou mayest prosper and be in health even as thy soul prospereth," is the basis for the vast medical program of the Denomination. Medical treatment as taught by the Bible is given practical application among the members of the Denomination and patients at its various institutions. Ab-

⁵ 1942 Year Book of the Seventh-Day Adventist Denomination, p. 2, 288.

⁶ Statistical Report of the Seventh-Day Adventist Conferences in the United States and Canada, First Quarter, 1942, p. 4.

stention from intoxicating liquors, tobacco, and narcotics is taught.⁷ In addition, vegetarianism in accordance with the word of the Bible is followed by the Denomination's health institutions.⁸

In the United States fourteen sanitariums are operated by the Denomination, and these are open to all patients regardless of the religious faith they espouse.⁹ Such well known organizations as the Battle Creek (Mich.) Sanitarium, the Glen Dale (Calif.) Sanitarium, and the Washington (D. C.) Sanitarium are among the institutions founded by the Denomination. Throughout the world a total of ninety sanitariums and sixty-eight treatment rooms and dispensaries are operated.¹⁰

2. *Educational Institutions.*—The development of the faith through education has been a prominent part of the Denomination's work. Throughout the world the Seventh-Day Adventists maintain two thousand six hundred and twenty-six elementary schools, and two hundred and fifty-one academies and colleges, with a total of over one hundred and ten thousand students.¹¹

3. *Publishing Houses.*—The printed word has always been the most effective medium for spreading the Gospel and, since the early days of the Denomination, has been recognized as of fundamental importance in the evangelical mis-

⁷ 1 Cor. 3: 16, 17; 9: 25; 10: 31; 1 Tim. 2: 9, 10; 1 John 2: 6.

⁸ Gen. 1: 29, "And God said, Behold, I have given you every herb bearing seed which is upon the face of all the earth, And every tree in which is the fruit of a tree yielding seed; to you it shall be for meat."

The armed services of the United States purchase for general use some of the health foods produced by the Pacific Union Conference of Seventh-Day Adventists.

⁹ Statistical Report of Seventh-Day Adventist Conferences, 1940, p. 20.

¹⁰ 1942 Year Book of Seventh-Day Adventist Denomination, p. 289.

¹¹ *Id.*, p. 291.

sion.¹² Today 83 publishing houses stretch around the world and issue publications in over 200 languages.¹³ All publishing houses are non-profit organizations. Each is organized as a benevolent, charitable and philanthropic institution, no dividends may be paid to any of its members, and none of its real or personal property is ever expended except to carry into effect the legitimate aims and ends of its being.¹⁴ By both the printed and spoken word, the

¹² Its amazing effectiveness is demonstrated by an incident occurring early in the history of the Denomination: Elder James White, a pioneer of the church, sent, in 1876, a religious volume and some tracts accompanied by a letter to Pitcairn Island. Though nothing further was done, it was learned a decade later that the entire population of the island had decided to change their day of worship from the first day of the week to the seventh and keep the Lord's Sabbath. Howell, *The Great Advent Movement*, p. 175.

¹³ The literature is issued in 202 languages and is prepared in the form of 329 periodicals, 2,338 bound books, 1,355 pamphlets, 5,234 tracts—a total of 9,256 separate publications. 1942 Year Book of the Seventh-Day Adventist Denomination, p. 290; Statistical Report of the Seventh-Day Adventist Conferences in the United States and Canada, First Quarter, 1942, p. 7.

¹⁴ A typical charter provision is that of Article 3 of the Articles of Incorporation of the Review and Herald Publishing Association, Takoma Park, Washington, D. C., which provides: "The general purpose and object for which this corporation is formed is to further, by all proper and legitimate agencies and means, the dissemination of religious and moral instruction; more particularly its purposes and objects are to secure and hold copyrights and plates of tracts, pamphlets, books, and periodicals; to publish, print, and circulate literature in all languages and countries; to receive gifts, legacies, and donations from any source whatever; to make gifts and appropriations from any or all of its resources from time to time; and to exercise all such power and authority as may be necessary to carry out the objects and purposes above specified. But the purpose and essence of this corporation, being purely benevolent, charitable, and philanthropic, it is hereby expressly declared that this is a corporation not for gain, that no dividends shall ever be declared or paid to any of its members, and that none of its property, real or personal, shall ever be used or expended except in carrying into effect the legitimate ends and aims of its being."

Gospel is carried into 412 countries in 824 languages.¹⁵

II

The Colporteur Evangelist System

A. In General.—The materials printed by the Denomination are disseminated by trained “colporteurs”.¹⁶ The colportage method of distribution of evangelical literature, as used by the Seventh-Day Adventist Denomination, is as old as the history of printing itself—the sale by itinerant church workers of religious tracts and books throughout the world.¹⁷ There is no alternative system by which such large quantities of literature can be distributed at so low a cost. The colporteur supplies the personal touch necessary to win souls. In 1941 over 1000 Seventh-Day Adventist colporteurs carried the Gospel into thousands of homes, with sales of over a million dollars. By their work many thousands are won to the message of God.

B. The Seventh-Day Adventist Colporteurs.—Scrupulous care is exercised in the selection and training of Seventh-Day Adventist colporteurs. They are “Gospel workers” whose qualifications are equal in standing with those who preach the Gospel.¹⁸ In addition to education and other requirements they must, of course, be consecrated to the zealous desire to bring the Gospel of Jesus Christ to the people. Applicants who have been accepted to enter the literature ministry as colporteur evangelists must attend a training school, and every conference in North America holds these special schools once a year. Frequently work-

¹⁵ 1942 Year Book, p. 287. Government departments and services draw heavily upon the linguists of the Denomination's missionary work, at the moment particularly those familiar with the Japanese tongue.

¹⁶ One who distributes or sells religious tracts and books.” Webster's New International Dictionary, Second Edition, p. 530.

¹⁷ Palmer, *The Printing-Press and the Gospel* (Washington, D. C., 1912).

¹⁸ White, *The Colporteur Evangelist* (Mountain View, Calif., 1930).

ers are brought back from the field for further training.

In the field each worker is under the supervision of a field missionary secretary to whom a report is made weekly. Each receives recompense on a commission basis or by guaranteed payments from the Denomination. After fifteen years of continuous service, each colporteur is entitled to the same pension as retired ministers. His calling is missionary work of the highest order. The literature sold by the colporteur consists, in the main, of religious books. A list of those books generally carried by the colporteur is as follows:

Adult Books:

1. The Holy Bible—King James version.
2. The Great Controversy—A History of the Christian Faith and Beliefs through the Ages.
3. Patriarchs and Prophets—Lives of the Holy Men of Old.
4. The Desire of Ages—The Life of Christ.
5. Bible Questions—Questions and Answers from the Bible.
6. The Christian Physician—Prevention and Cure of Disease.
7. Our Times and Their Meaning—The Bible in Everyday Life.

Children's Books:

1. The Children's Friend—The Story of Jesus.
2. Stories of the Kings—Lives of the Kings from David to Christ.
3. Easy Steps in the Bible Story—From the Creation to Joseph.
4. Men of Might—Stories from Moses to Samuel.
5. Bedtime Stories.

No one of liberal mind could take exception to any of these prints, or to the method by which they are distributed.

III.

The Adverse Effect of the Present Opinion.

In view of the fact that the great bulk of Seventh-Day Adventist literature is, and must be, distributed by the colporteur system, it is obvious that the present decision injuriously affects the spreading of the Gospel by the printed word. The limited means of minority religious groups cannot support the alternative methods of using newspaper space and radio time. Moreover, no alternative has been discovered which can be substituted effectively for the colporteur system.

In many instances license taxes such as those approved by the court would exceed, in small and rural areas where colporteurs work, the *gross* sales of religious literature. These small towns and rural areas are the principal field of colporteur activity. The State of Arizona may be taken as illustrative. Normally that State should be a fruitful ground. Instead, however, over two-thirds of the cities and towns of Arizona enforce ordinances requiring license fees for colporteurs. A tabulation of some of these cities and the fees exacted is as follows:

CITY	POPULATION	LICENSE FEE
Buckeye	1,077	\$10 per quarter
Casa Grande	1,351	\$25 per quarter
Douglas	8,623	\$25 per annum
Duncan	1,050	\$10 per annum
Flagstaff	5,080	\$5 per day
Nogales	5,135	\$50 per day
Phoenix	65,414	\$25 per quarter
Prescott	6,018	\$10 per month
Safford	1,706	\$10 per annum
Tucson	36,818	\$25 per quarter
Wickenburg	734	\$200 per annum
Willcox	806	\$2 per day
Winslow	4,577	\$5 per day
Yuma	5,325	\$5 per day

In other States typical municipal license fees are as follows:

STATE	CITY	POPULATION	LICENSE FEE
California	Berkley	85,547	\$60 per annum
	El Cerrito	6,137	\$10 per quarter
	Roseville	6,653	\$5 per month
	San Diego	203,341	\$2.50 per month
	Woodland	6,637	\$50 per quarter
Florida	Lake Worth	7,408	\$25 per annum
Georgia	Albany	19,055	\$250 per annum
	Griffin	13,223	\$75 per annum
Iowa	Cedar Rapids	62,120	\$75 per annum
	Council Bluffs	41,439	\$10 per day
	Davenport	66,039	\$3 per day
	Dubuque	43,892	\$10 per day
	Fort Dodge	22,904	\$35 per day
	Keokuk	15,076	\$5 per day
	Mason City	27,080	\$3 per day
	Sioux City	82,364	\$25 per day
	Corbin	7,893	\$10 per week
Kentucky	Somerset	6,154	\$7.50 per day
	Ithaca	19,730	\$5 per month
New York	Massena	11,328	\$50 per annum
	Charleroi	10,784	\$5 per day
Penn.	Duquesne	20,693	\$2 per day
	Erie	116,955	\$75 per annum
	Grove City	6,296	\$25 per annum
	New Brighton	9,630	\$5 per day
	Charleston	71,275	\$10 per week
South Carolina	Tacoma	109,408	\$5 per month
Washington	Seattle	368,302	\$5 per month
Wisconsin	Marshfield	10,359	\$10 per day

The foregoing list is by no means complete. It represents only those specimens recently sent in to Denomination Headquarters by the Gospel workers.

The crushing individual and aggregate effect of these fees is apparent. Colporteurs remain in one vicinity for only a brief time, depending on the size of the community. At best their sales of Gospel literature are limited, and they earn for themselves or are paid by the Denomination no more than a modest missionary salary or commission.¹⁹

¹⁹ The published Colporteurs' Summary—North America, 1940-1941 (Exhibit VI herein), shows a total of 1018 colporteurs operating and delivering for the month of December, 1941, \$97,997.19 worth of gospel literature, and for the whole year of 1941 a total of \$790,610.36, or an average of \$776.63 per person for one year, or \$65.00 per month. Many of these, however, are students and temporary workers. Since the Colporteurs

The principal cases considered by the court were not isolated instances of the use of the licensing authority to shut the door upon colporteur evangelists and the spreading of the Gospel. The trend is rather toward the universal adoption of prohibitive fees. In addition to new ordinances which have been adopted, and will unquestionably continue to spring into being as a result of the decision, existing ordinances, heretofore not enforced against colporteurs because of the supposed constitutional guaranty, will be put into vigorous effect. It is not too much to say that the cumulative result may be the ultimate destruction of the Denomination, and it must necessarily curb drastically the missionary method it has developed in the United States without official hindrance for a century.

Despite the conceded necessity of accommodation of conflicting interests of Church, press, and State there must be, according to our constitutional system, a sphere of religious freedom into which the State may not trespass. The colporteur system is a religious rite, a method of carrying the Gospel to otherwise inaccessible places. Yet the Court, by its present decision, denies the right to so spread the Gospel except to those of substance. The denial of the only practical method to carry on this religious work is a denial of the right itself. For these reasons, the Seventh-Day Adventist Denomination requests the court to reopen and rehear these cases in order that the facts, necessary implications, and disastrous results of the present decision upon the propagation of the faith may be thoroughly considered. Nothing less than the freedom of religion is at

receive half of their collections, those who give their entire time to the work earn an average of \$17.60 per week, from which they must pay traveling and living expenses for themselves and their families not only at the time that the orders are taken but also at a later date when the deliveries are made. From the contrast between the amount of municipal license fees and the income of the colporteurs, it is obvious that the payment of such license fees is prohibitory.

stake. Surely so fundamental an essential of civilized people requires this Court to stay its hand until every faith is heard and every result submitted.

Respectfully presented,

HOMER CUMMINGS,
MILLWARD C. TAFT,
*Counsel for the General Conference
of Seventh-Day Adventists.*

September, 1942.

VERIFICATION

Millward C. Taft, being first duly sworn, deposes and says: I am General Counsel of the General Conference of Seventh-Day Adventists with offices at 6848 Eastern Avenue, N. W., Takoma Park, Washington, D. C.; I have read the foregoing brief amicus, and the statements of fact set forth therein are true to the best of my knowledge and belief.

MILLWARD C. TAFT.

Subscribed and sworn to before me this — day of September, 1942.

_____,
*Notary Public for the
District of Columbia.*

My commission expires — —, —.